S.B. CIVIL WRIT PETITION NO.5464/2004
(Roopkamal & Ors. vs. Rajkamal)

Date :: 14.05.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr.Vinod Bhadu, for the petitioners.
Mr.G.R. Goyal, for the respondent.

Heard learned counsel for the petitioners.

In this petition, petitioners are challenging the order dated 22nd September, 2004 by which an application under Section 65 of the Evidence Act to lead secondary evidence was allowed by the trial court in civil suit filed by the respondent-plaintiff.

It is contended by learned counsel for the petitioners that the application filed by the respondent-plaintiff was not supported by any affidavit, therefore, the application was to be dismissed by the learned trial court in view of the judgment of Hon'ble Supreme Court reported in 2000 (9) SCC 241 (State of Rajasthan & Ors. vs. Khemraj & Ors.) wherein it has been held that the application seeking permission to lead secondary evidence under Section 65 of the Evidence Act was not supported by any affidavit is not correct and on account of these deficiencies the learned trial court rejected the application filed under Section 65 of the Evidence Act.

In para 3 of the said judgment it is further observed as under:-

> "3. In the face of the pleadings of the appellants and the defects noticed by the trial court, no fault can

> be found with the orders of the trial court or of the High Court. However, it appears appropriate to us, in the interest of justice, to permit the appellant to file a fresh application in the trial court for seeking permission under Section 65 of the Evidence Act to lead secondary evidence supported by a proper affidavit and giving full details necessary to attract the provisions of Section 65 of the Evidence Act."

In these facts and circumstances of the case, the order impugned dated 22nd September, 2004 is set aside. However, the respondent-plaintiff is at liberty to file proper application in accordance with law.

With these observations, the petition is disposed of.

{GOPAL KRISHAN VYAS}, J.

A.K. Chouhan/-